



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**MISC. APPLICATION NO. 135A OF 2015**

**IN THE MATTER OF SMN (MINOR)**

**SNM.....APPELLANT/RESPONDENT**

**VERSUS**

**FNN.....RESPONDENT/APPLICANT**

**RULING**

1. Through a notice of motion dated 15<sup>th</sup> February 2019 and filed pursuant to Section 12 of the Civil Procedure Act, Order 2 rule 15 and Order 51 of the Civil Procedure rules, 2010, the appellant sought dismissal of the suit for want of prosecution. The application is predicated on grounds on the face of it and affidavit in support sworn on 15<sup>th</sup> February 2019 by the appellant arguing that the appellant has lost interest in prosecuting the case since 27<sup>th</sup> November 2017 when the matter was last mentioned before court.
2. Despite service of the application upon the respondent/applicant, there was no response filed challenging the application. When the application came up for hearing, there was no appearance on the respondent's side hence the matter proceeded ex parte.
3. By a notice of motion dated 15<sup>th</sup> September 2015, the respondent/applicant sought stay of execution orders against orders made by the Children's Court on 7<sup>th</sup> April 2014 vide Children Case No. 222 of 2016 where the court ordered him to meet some maintenance expenses in support of their child. At the same time, the respondent/appellant sought leave to appeal out of time and attached a draft memorandum of appeal. However, the firm of Muchoki, Kangata and Njenga advocates appearing for the appellant filed an application dated 12<sup>th</sup> June 2017 seeking to cease acting for the appellant.
4. The application was allowed on 27<sup>th</sup> November 2017. Since then, no action has been taken by the applicant hence this application.
5. Although the applicant has not cited the appropriate and relevant law in dismissal of suits for want of prosecution, it is apparent that the suit has been lying dormant since 27<sup>th</sup> November 2017 which period is more than one year. Order 17 rule 1 sub-rule (2) allows a court on its own motion to serve notice on a party who fails to take any step in prosecuting his or her suit for one year to show cause why such suit should not be dismissed. Sub-rule 3 provides for any party to move the court to dismiss a suit which remains dormant for a period exceeding one year.
6. In this case, the suit was last mentioned on 27<sup>th</sup> November 2017 and has remained dormant without any justifiable cause hence a violation of Order 17 rule 1 Sub rule 3. The respondent having not responded or appeared to show cause why the suit should not be dismissed, I have no reason not to allow the application.

7. Accordingly, the application is hereby allowed and the suit herein dismissed for want of prosecution with costs to the applicant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY MAY, 2019.**

**J.N. ONYIEGO**

**(JUDGE)**